

**MINUTES**

**MONTANA SENATE  
58th LEGISLATURE - REGULAR SESSION**

**COMMITTEE ON JUDICIARY**

**Call to Order:** By **CHAIRMAN DUANE GRIMES**, on March 28, 2003 at 9:00 A.M., in Room 303 Capitol.

**ROLL CALL**

**Members Present:**

Sen. Duane Grimes, Chairman (R)  
Sen. Dan McGee, Vice Chairman (R)  
Sen. Brent R. Cromley (D)  
Sen. Aubyn Curtiss (R)  
Sen. Jeff Mangan (D)  
Sen. Jerry O'Neil (R)  
Sen. Gerald Pease (D)  
Sen. Gary L. Perry (R)  
Sen. Mike Wheat (D)

**Members Excused:** None.

**Members Absent:** None.

**Staff Present:** Valencia Lane, Legislative Branch  
Cindy Peterson, Committee Secretary

**Please Note.** These are summary minutes. Testimony and discussion are paraphrased and condensed.

**Committee Business Summary:**

Hearing & Date Posted: HB 701, 3/10/2003; HB 451,  
3/10/2003

HEARING ON HB 701

Sponsor: Rep. Brad Newman, HD 38, Butte.

Proponents: Honorable Kurt Krueger, District Court Judge,  
Second Judicial District  
Honorable Jim Regnier,  
Montana Supreme Court Justice  
Rex Renk, Deputy Clerk, Montana Supreme Court

Opponents: Ruth Cox, Law Clerk, First Judicial District  
Nancy L. MacCracken, Law Clerk,  
Sixth Judicial District  
Karla Gary, Chief Justice, Montana Supreme Court

Opening Statement by Sponsor:

**Rep. Brad Newman, HD 38, Butte,** explained that HB 701 will amend Section 3-1-130 of the Code to make it clear the Clerk of the Montana Supreme Court and district judges are entitled to appoint personal staff at their discretion. This would include the recruitment and termination of workers. This would constitute an exemption to the current hiring practices. The bill will not affect the state court pay plan and will not infringe upon state assumption. The intent is not to exempt these personal employees from the pay matrix, but rather to address the policy concern. Some employees are so close to elected officials they should be considered confidential and personal assistants, as opposed to civil servants. The Governor and Attorney General are both entitled to hire certain confidential employees. This bill recognizes elected officials have a need to have certain confidential reliable people on board who are not beholding to someone else. **Rep. Newman** told of a judge in northeastern Montana with one employee, who happens to be a holdover from the prior judge's administration. This employee actively campaigned against the successor judge. **Rep. Newman** feels this created an untenable situation. Elected judges should be allowed to hire loyal personal staff.

Proponents' Testimony:

**Honorable Kurt Krueger, District Court Judge, Butte,** presented letters of support to the Committee from **Judge Thomas McKittrick, Great Falls; Judge Loren Tucker, Dillon; Judge Ted Lympus, Kalispell; Judge Katherine Curtis, Kalispell; and Judge Stewart Stadler, Kalispell, EXHIBIT(jus66a01).** Judge Krueger feels HB 701 is a housekeeping bill because state assumption did not consider changing the way judges and justices hire and fire their personal

staff. Judges and justices have always had this right, but state assumption changed that long-standing practice without debate or discussion. HB 701 will keep the judiciary on a level playing field with the Executive and Legislative Branches and will keep the status quo for the selection of an elected official's personal staff. The Governor, Attorney General, Secretary of State, Auditor, and Superintendent of Public Instruction all have this right. The Legislative Branch has the right to select its own staff. Leadership has the right to select its own secretaries, committee staff, and personal staff. The Judicial Branch, an equal branch government, should also have this right. Elected officials should have the right to choose a staff that is loyal, confidential, and committed to implementing the judge's decisions and policies. Decisions are made by judges and justices on a daily basis that impact everyone. For this reason, judges and justices must have full faith and confidence in their staff. **Judge Krueger** defeated an incumbent judge who had been on the bench for approximately ten years. **Judge Krueger** feels it would have been very difficult to work with his predecessor's staff in light of the campaign. He feels he would have spent more time dealing with staff issues rather than judicial issues. Some judges only have one staff person, and the most staff a judge would have is a court assistant or secretary, a law clerk, and a court reporter. The law clerk position varies throughout the state, but usually a law clerk will sit with a judge for a year or two. These positions are not viewed as permanent, and the position usually lasts as long as the judge is there and the law clerks serve at the pleasure of the judge. The judicial personnel plan will go into effect in July 2003. As **Rep. Newman** indicated, amendments were passed in the House requiring the judicial staff for judges and justices to remain under the same pay matrix adopted by the Supreme Court.

**Honorable Jim Regnier, Montana Supreme Court Justice**, spoke on behalf of himself and as past-president of the Montana Judges' Association. **Justice Regnier** testified that when state assumption passed and the personnel plan was implemented, he received many calls from judges throughout Montana who were concerned about this issue. His suggestion at that time was for the judges to bring the issue up at the annual meeting of the Montana Judges' Association. A vote was taken at that meeting to introduce legislation. In many instances, carryover clerks and judicial assistants work out fine. There are times, however, an elected judge can encounter a situation that is awkward. **Justice Regnier** feels judges and justices need flexibility to handle those particular situations.

**Rex Renk, Deputy Clerk of the Montana Supreme Court**, appeared on behalf of **Ed Smith, Clerk of the Montana Supreme Court**. **Mr. Renk** testified that **Ed Smith** supports HB 701 because it is fair legislation and provides elected officials in the Judicial Branch

the same right to exempt personal staff that the Executive and Legislative Branch elected officials are afforded. This legislation will continue a practice which was in place prior to state assumption. **Mr. Renk** stated **Mr. Smith** urges support of HB 701.

Written testimony in favor of HB 701 was also submitted from the **Honorable Mark L. Guenther** and the **Honorable Mike Salvagni**, of the 18<sup>th</sup> Judicial District, Bozeman, **EXHIBIT(jus66a02)**.

#### Opponents' Testimony:

**Ruth Cox**, is a permanent law clerk at the district court in Helena, and has held her job for 12 years. **Ms. Cox** testified she is one of the employees who will be affected by HB 701. **Ms. Cox** stated she performs her duties professionally and competently, and she would do so regardless of who holds the office of judge. **Ms. Cox** submitted written testimony in opposition to HB 701, **EXHIBIT(jus66a03)**. **Ms. Cox** stated many employees who opposed HB 701 were hesitant to testify because of the threat of "professional suicide," and felt if the bill passes, they could be fired for opposing it.

**Nancy L. MacCracken**, is a long-term law clerk in the Sixth Judicial District. **Ms. MacCracken** would like to see the language "at the pleasure of" removed from the bill and replaced with "at the discretion of" or some other less demeaning language. **Ms. MacCracken** feels "at the pleasure of" is not professional verbiage. In addition, she would like to see the bill amended so it would apply only to short-term clerks and not apply to long-time secretaries or clerks. Ultimately, **Ms. MacCracken** does not believe employees serve at the pleasure of any judge, but rather serve the people of the state of Montana. Sometimes law clerks are the only person who can play devil's advocate and discuss ongoing cases with the judge. Fear of losing their jobs would stifle this process. **Ms. MacCracken** agrees a judge needs reliable and trustworthy staff, but also believes a judge can get that from present staff. Judges should be able to fire staff if that staff is not doing their job, but judges should not be allowed to rid themselves of someone when they have a personal, political, or religious disagreement. **Ms. MacCracken** supported written testimony in opposition to HB 701, **EXHIBIT(jus66a04)**.

**Honorable Karla Gary**, Chief Justice of the Montana Supreme Court, testified as an individual about HB 701 and, in a sense, testified on behalf of staff and employees of the Judicial Branch. **Chief Justice Gray** directed the Committee to look at the bill and the referenced to personal staff "as designated." **Chief Justice Gray**

feels the bill does not specifically identify which employees are at risk, and she believes the numbers are large. The numbers could include secretaries, judicial assistants, law clerks, court reporters, chief juvenile probation officers, all of whom report directly to a judge or justice. **Chief Justice Gray** fears many employees could be at-will employees and could be subject to termination without cause. **Chief Justice Gray** feels this bill wrongs professional staff who do their jobs and who, under the personnel policies adopted by the Supreme Court, have the same protections as most state employees.

*(Tape : 1; Side : B)*

**Chief Justice Gray** articulated that these are professional-level employees who feel they are employed by the court. They are not beholding to anyone, but rather are there to perform their duties. **Chief Justice Gray** finds it offensive that the bill assumes these employees will not perform their duties. In responding to the decision of the Montana Judges' Association, **Chief Justice Gray** informed the Association also voted down a motion to exempt court reporters. Therefore, she does not know what the intent of the bill is regarding court reporters. **Chief Justice Gray** clarified that court reporters are there to do transcripts and cannot imagine why they would be considered confidential employees. **Chief Justice Gray** exclaimed this is not a housekeeping bill because it deals with employment rights of more than 100 employees of the Judicial Branch. **Chief Justice Gray** felt the passage of state assumption did not include discussion of many things since it came in under the wings of HB 124. She feels lack of discussion on this issue is irrelevant. The personnel policies adopted by the Montana Supreme Court are the status quo. Those policies went into effect immediately upon state assumption. In commenting on **Judge Krueger's** situation in coming into office having defeated an incumbent judge, **Chief Justice Gray** suggested the previous judge's assistant could have been a professional assistant to **Judge Krueger** as well, and it would be wrong to assume otherwise. **Chief Justice Gray** spoke of a situation encountered by **Judge Curtis** when an employee of the previous judge removed vital information from the computer. **Chief Justice Gray** felt there would be cause, under the current personnel policies, to terminate that employee. **Chief Justice Gray** agreed the lack of opponents to the bill is due to the fear of being fired. **Chief Justice Gray** urged the Committee to not concur with HB 701.

**Questions from Committee Members and Responses:**

**SEN. BRENT CROMLEY** asked **Ms. MacCracken** to explain her position as a law clerk.

**Ms. MacCracken** began her position as full-time staff in 1997. She is the judge's only staff.

**SEN. CROMLEY** asked **Ms. MacCracken** to explain the difference between a long-term law clerk and a short-term law clerk.

**Ms. MacCracken** felt it is determined by the terms under which a person is hired. Prior to state assumption, law clerks felt they would have their position for as long as the judge held office, unless they were to be fired for cause. Once state assumption passed, she considered herself to be included under the state personnel plan.

**SEN. CROMLEY** asked **Ms. MacCracken** if she was required to be trained as a lawyer and be a member of the State Bar of Montana.

**Ms. MacCracken** replied she did meet those requirements.

**SEN. CROMLEY** asked **Ms. MacCracken** if it was her understanding that she was hired to serve at the pleasure of the hiring judge and if the conditions of her employment were ever set forth in writing.

**Ms. MacCracken** understood she was hired to serve at the discretion of the hiring judge. The conditions of her employment were not set forth in writing.

**SEN. CROMLEY** asked **Ms. MacCracken** if she was aware of state assumption of the courts in 2001.

**Ms. MacCracken** replied she was aware of the process and understood that process would change the conditions of her employment and did not actively support or oppose state assumption. **Ms. MacCracken** added the judge that she works for supported state assumption, but opposes HB 701.

**SEN. JEFF MANGAN** asked **Rep. Newman** if he could distinguish a major difference between the executive and legislative branches and the fact that they run on partisan tickets, whereas folks in the judicial branch run without party tickets.

**Rep. Newman** stated there are inherent differences between the three branches of government. In Montana, judges are elected, albeit a non-partisan ticket. Since judges are elected, there is partisanship regardless of whether a candidate runs on a party ticket.

**SEN. MANGAN** asked **Ms. Cox** if when she was hired it was her understanding that she was working at the discretion of the judge who hired her.

**Ms. Cox** explained she works for Judge McCarter in the First Judicial District, and they did not discuss the position in terms of her serving at the discretion of the judge. **Ms. Cox** was initially hired for a one-year period, then hired for a second one-year period. In the middle of the second period, she was asked to be come a permanent law clerk.

**SEN. MANGAN** assumed before state assumption, **Ms. Cox's** paychecks were issued by Lewis and Clark County and she followed policies and procedures set forth by Lewis and Clark County.

**Ms. Cox** clarified the court did not have separate policies and procedures and she was subject to the personnel policies of Lewis and Clark County.

**SEN. GARY PERRY** stated there is a dilemma because we have judges, who we know have good judgment, but are 180 degrees apart on this bill. **SEN. PERRY** feels he is being asked to determine which judges have the best judgment.

**Rep. Newman** apologized for putting the Senators, and especially his fellow lawyers, in this predicament. There are two sides of this issue, and he feels it needs to be debated, and everyone should walk away understanding that the system works. Although judges and justices do not run as democrats or independents, they clearly have defined philosophies. **Rep. Newman** feels it would be offensive to the system to impose upon the new judge personal staff that may or may not have those same views or philosophies.

**SEN. PERRY** asked why the positions affected by the bill are not specifically listed.

**Rep. Newman** explained it is because state assumption did not occur until just a few months ago. Each of these positions with each district judge is different. In some cases it was clear the law clerks were employees of the county; in some cases it was clear the law clerks served at the pleasure of the judge. State assumption has caused them to review the policy because of this inconsistency. Therefore, the issue must be debated and a policy adopted.

**SEN. PERRY** wanted to know if a judge could terminate employment for reasons, including a whim, that would violate the human rights laws that apply to private businesses.

**Rep. Newman** answered theoretically, they could.

**SEN. DAN MCGEE** inquired if it were possible the bill, if passed, could spawn a legal challenge and the final determination to this issue would be left to the courts.

**Rep. Newman** proclaimed anything is possible.

**CHAIRMAN GRIMES** asked **Beth McLaughlin, Human Resources Director for the Court**, if the HATCH Act would affect federal aid employees as it regards nonpartisan elections.

**Ms. McLaughlin** stated the HATCH act would not affect these employees since they are not funded in any way be federal dollars. They would be subject to state laws which discuss limits on partisan politics in the work place.

**CHAIRMAN GRIMES** asked if there are juvenile justice funds or other funds from federal grants involved. If there is any federal money at all involved, he feels the HATCH would apply.

**Ms. McLaughlin** replied he was correct that the drug court coordinators are funded by federal dollars and would be limited by the HATCH act. Chief probation officers may also be partially funded by federal dollars. She felt 30 to 40 percent of the staff would be touched by some sort of federal money.

**CHAIRMAN GRIMES** asked if under current personnel policies some of the activity described could be mitigated.

**Ms. McLaughlin** noted state government attempts to provide employees with fairly strict guidance about what is appropriate behavior activity during an election and any campaigning inside a person's office is strictly prohibited.

**SEN. CROMLEY** understands that **Rep. Newman** would bring the situation back to the way it was prior to state assumption.

**Rep. Newman** felt it would bring the situation closer to the way it was prior to state assumption.

**(Tape : 2; Side : A)**

It would bring the personal positions closer to what they were at as a policy level prior to state assumption. They made sure they were not going to affect the pay matrix. They are not talking about creating new positions or new levels of salary. The are just talking about who should be the personal assistants to these elected officials.

**SEN. CROMLEY** inquired of **Rep. Newman** if he had heard from any of the judges or persons in Yellowstone County and whether they had expressed a personal opinion about this issue.

**Rep. Newman** had not heard from any of the judges in Yellowstone County.

**CHAIRMAN GRIMES** asked about the reference to "at the pleasure of" and he believed that to be a term of art and asked **Rep. Newman** to address the use of that phrase.

**Rep. Newman** replied the phrase is a term of art and is not intended to be demeaning in any fashion. He stated this bill is not an allegation of incompetence, and really tries to address the policy question of who the personal assistant should be.

**SEN. JERRY O'NEIL** asked **Rep. Newman** if he had any idea of how many judges bring their personal secretaries with them to their judgeship.

**Rep. Newman** ventured prior to state assumption, the vast majority of judges brought their assistants with them. It remains to be seen what happens after state assumption, but the answer will depend on what is done with this policy question.

**SEN. O'NEIL** asked if there is chance future judges will not be allowed to take their secretaries with them when they are elected.

**Rep. Newman** stated if this bill does not pass, a newly-elected judge will not be able to make that choice.

**SEN. MCGEE** asked about the phrase "and other assistants as designated" and wondered if **Rep. Newman** could envision putting a box around that phrase somehow and still accomplish what he is doing.

**Rep. Newman** replied that the problem is the designation of different assistants. Some are "paralegals," "law clerks," "personal assistant," or "secretaries." This makes it difficult to put language in the bill to clearly define these positions.

**CHAIRMAN GRIMES** gave **Judge Krueger** an opportunity to close, and **Judge Krueger** stated the issue is very important to judges and he feels the decision should be left to the discretion of the judge. Many judges will retain the current staff, and some would like an opportunity to bring their own staff. Judge Krueger hoped the Committee would keep the status quo that has worked for decades in place.

**Closing by Sponsor:**

Rep. Newman closed stating this is not a housekeeping bill, but rather a policy question. He asked the members of the Committee to consider whether it would be appropriate policy to impose upon the Governor or Attorney General that those elected officials retain the personal legal advisors or press assistants of their predecessor. There are a few positions out there that are truly confidential and personal in nature, and **Rep. Newman** feels that distinction should be respected. This will not preclude carryover employees, but it will allow the judge discretion in choosing a personal assistant.

**HEARING ON HB 451**

**Sponsor:** Rep. Edith Clark, HD 88, Sweetgrass.

**Proponents:** Rep. Norman Ballantyne, HD 86, Valier  
Allan Underdal, Chairman,  
Toole County Commissioners  
Rep. Carol Juneau, HD 85, Browning  
Sen. Jerry Black, SD 44, Shelby  
Sen. Glenn Roush, SD 43, Cut Bank  
Joe Williams, Montana Department of Corrections  
Mike Mahoney, Warden, Montana State Prison  
Jim MacDonald, Warden,  
Crossroads Correctional Facility  
Larry Bonderud, Mayor, City of Shelby  
Mike Ruppert, CEO, Boyd Andrew Community Services  
Dwain Iverson, Self  
Joni Stewart, Executive Director, GAIN  
LeAnne Kavanagh, *Cutbank Pioneer Press*,  
and the *Glacier Reporter* in Browning

**Opponents:** Scott Crichton, Executive Director,  
American Civil Liberties Union

**Opening Statement by Sponsor:**

HB 451 is an economic-enhancement bill that will help Shelby, the surrounding counties, the regional correctional facilities, the Department of Corrections (DOC), and the State of Montana. The private prison in Shelby has achieved a proven safety record, received national accreditation, and made a very positive economic impact. When the economic downturn caused the DOC to reduce the number of inmates housed in the private prison, the prison staff also had to be reduced. The breakeven point for the facility by prison bed is 430. They now house 305. Staff at the

facility has been cut from 160 to 109 causing an economic impact on the Community of Shelby and Toole County. The City of Shelby and Toole County are attempting to keep the business viable. They have held public meetings, radio talk forums, newspaper coverage, mailings, and have sought public opinion. A local survey of registered voters supported a majority of support for housing out-of-state prisoners as evidenced by the Results of the Unofficial Ballot of 12-16-02 contained in the packet of information distributed to the Committee members,

**EXHIBIT(jus66a05)**. **Rep. Clark** stated the packet also contains letters of support from County officials, regional correctional officials, local officials, and business people, as well as Governor Martz. **Rep. Clark** submitted a proposed amendment, HB045103.apm, **EXHIBIT(jus66a06)**, to provide the facility more flexibility to conduct business. **Rep. Clark** explained Instruction 2 of the amendment is the most crucial to the private prison business. Instructions one, four, and five are up to the Committee's discretion, while Instruction three is proposing technical language.

#### **Proponents' Testimony:**

**Rep. Norman Ballantyne, HD 86, Valier**, stated the House passed the bill almost unanimously. They have lost jobs in Shelby, and those jobs need to be retained because there has been a tremendous loss of economic base on the Hi-Line. These jobs also provide a tremendous number of tax dollars into the area. The people of Toole County overwhelming supported the proposal to bring in federal prisoners. All of the fears of having a prison located in the community have disappeared, and the prison has proven to be an excellent corporation to have as a neighbor. The other issue **Rep. Ballantyne** asked the Committee to consider is the opportunity to bring Native American prisoners in federal prisons back to Montana and move them closer to their families. In addition, in addressing Homeland Security, this could be a place for INS to hold individuals while they are being processed.

**Allan Underdal, Chairman of the Toole County Commissioners**, testified the area has always been agricultural based and oil based. Now, the Shelby area is known for the 4C's, i.e. cattle, crops, convicts, and collies. **Mr. Underdal** testified there are currently 207 open cells in Crossroads Correctional Facility, an amount more than adequate to give each of the 180 abandoned collies its own cell! These empty cells do not represent a money-making proposition for a for-profit company. In addition, 56 employees have been laid off in the past few months. This layoff not only effects Toole County, but the surrounding counties as well. HB 451 is critical to corrections and saving the state money in continuing to provide an essential service and

good correctional mix for the state. In order to be prepared for the future needs of corrections, the DOC and Crossroads Correctional Facility need the flexibility to react and survive in stressful times. **Mr. Underdal** believes this bill offers that flexibility. Toole County and the City of Shelby have worked very hard to attract and maintain business in their area and they view Crossroads Correctional Facility as a business. The prison is no less important to Shelby than Malstrom Air Force Base is to Great Falls or the Universities to Bozeman, Missoula, Dillon and Havre.

**Rep. Carol Juneau, HD 85, Browning**, supports the bill to allow prisoners from out of state to be housed in Crossroads Correctional Facility. Rep. Juneau supports the bill to make the bill better. The amendment will allow federal prisoners to be housed in Crossroads Correctional Facility. American Indians from Montana's seven Reservations who are convicted in federal courts are housed in federal prisons. This would put American Indians closer to their families who can help in the process of rehabilitation. **Rep. Juneau** feels all inmates need support from their families in rehabilitation and in making a successful transition back into their communities. In addition, Crossroads Correctional Facility provides a great number of jobs in the area.

**Sen. Jerry Black, SD 44, Shelby**, supports HB 41 and stated at the time of the election, this is the number one issue people were discussing in Northern Montana. Things were going along fine until the DOC realized it was over budget and began releasing prisoners early for parole. This caused concern about safety among Montana citizens as well. This private \$5 million facility was built with the assurance from the state of Montana that they would be able to provide a sufficient number of prisoners to make it viable and keep it successful. It has become apparent this is not a secure situation and Crossroads Correctional Facility could be forced to close because it is not economically viable to continue operating. The amendment will permit out-of-state inmates to enter Crossroads Correctional Center. These inmates will be screened by the Correctional Department. If at anytime the Department needs those beds returned, the out-of-state prisoners will be returned. This will provide an insurance policy to the state of Montana and their future needs. **Sen. Black** stated Crossroads Correctional Facility has proven to be a very good citizen and operates an excellent prison facility, they have an impeccable record, and **Sen. Black** feels Montana should be a good business partner. Northern Montana is in dire need of jobs and economic viability. **Sen. Black** submitted a written statement in support of HB 451, **EXHIBIT(jus66a07)**.

**Sen. Glenn Roush, SD 43, Cut Bank**, commented a number of his constituents are employed at Crossroads Correctional Facility. He has received 60-70 letters from his constituents in support of this legislation. **Sen. Roush** also supports the amendment. **Sen. Roush** supports the idea that the DOC have the sole control to evaluate and screen any out-of-state or federal prisoner brought into the facility. **Sen. Roush** expressed concern about the liability for an out-of-state prisoner in case of illness or injury. At one time, there was an overflow of prisoners in Montana, and this was a very nice facility built to meet that need. **Sen. Roush** asked the Committee to concur in the bill.

**(Tape : 2; Side : B)**

**Joe Williams, Montana Department of Corrections**, stated Montana is in a unique situation because we have an abundance of offenders, but not an abundance of cash. September 11, the war on terror, and the fragile stock market all impact on consumer confidence and have caused an economic downturn. The state was able to reduce the population in secure facilities by using a program called "conditional release." Since 1993 there has been a build up of DOC commits in prison settings rather than community settings. They have removed 535 inmates from correctional settings into community settings. The remaining offenders present to great a risk to public safety to remove them from secure facilities. During the next couple of years, the budget is tight and lean, but long-term needs are heavily dependent on the continued viability of the Crossroads Correctional Facility in Shelby. The epidemic rise of methamphetamine use and the absolute havoc it creates, will have a huge impact on the correctional system. The federal government is providing HIDTAA money (High-Intensity Drug Traffic Assistance Areas). This funding has helped counties like Cascade and Lewis and Clark in discovering meth labs. While there is a short-term cash problem, there is a long-term need for the beds. There are roughly 600 out-of-state offenders in Montana, and 340 are on interstate compact and are in our communities on probation and parole. There are roughly 200 that are out-of-state residents who committed their felonies in Montana, and they are currently incarcerated in different institutions in Montana. There are another 31 in Montana who came to MSP from out of state for various other reasons. Crossroads Correctional Facility is a top-notch facility and provides an effective public/private partnership.

**Mike Mahoney, Warden, Montana State Prison (MSP)**, supports HB 451. This is an economic issue for the Shelby area and Crossroads Correctional Facility provides a payroll of approximately \$3 million and pays in excess of \$300,000 in taxes.

In tough economic times, this should certainly be a consideration. The institution is well run, and **Warden MacDonald** does an outstanding job. From **Warden Mahoney's** perspective, it is an issue of needing to command resources. His responsibility as Warden is to make sure Montana will have available to it in the next biennium the tools and resources to meet the demand of corrections, and the mostly costly parts of the operations, which is the secure care component of the DOC. In order to accomplish this, **Warden Mahoney** feels we need to take a look at what has happened to DOC in this biennium and the net effect it has had on programs. As Montana became aware of the problem in state government in terms of financing, appropriate action was taken and they looked at what immediate steps could be taken to reduce costs for department operations. They looked at imposing a \$2.63 cut in the per diem rate to the regional facilities and the private prison. This had a profound impact on the operations of those facilities, and those facilities had to adjust by reducing staff and programs. They also approached the DOC Advisory Council and asked for advice. They successfully incorporated the conditional release program. This has strategically placed DOC in a position to be on budget for this biennium. This is significant because in looking at those contracts and the reduction in population, there were guarantees in the contracts for the three regional prisons, but there was not guarantee in the state's contract with the private prisons. The only way to realize savings is to reduce the population at the private prison. This has put that facility's future in peril. This bill will allow them to bring in resources from other states, but will also enjoin them to a level so that when Montana's issues become prominent again, the out-of-state inmates will return to their state of origin, so Montana inmates will have priority for those beds. This would enable Montana to meet its needs in the upcoming biennium. **Warden Mahoney** asked the Committee to vote positively on this bill.

**Jim MacDonald, Warden, Crossroads Correctional Facility**, stated Corrections Corporation of American (CCA) was invited to come to Montana and built a 512 multi-custody facility, which is now known as Crossroads Correctional Facility. This prison was built for the intended use by Montana and by the DOC. They entered into a possible twenty-year partnership with Montana to manage the facility and its inmates. The facility employs 165 people and the payroll is \$3.8 million. The facility pays property taxes in the amount of \$515,000 annually. Additionally, they are the largest consumer of local public utilities. This has helped to stabilize the utility rates in the community. Crossroads Correctional Facility has established a good partnership and working relationship with DOC. They have done what they said they would do by providing the highest quality of correctional

service to the Department. In less than two years of operation, **Warden MacDonald's** staff received the National Accreditation to the American Corrections Association. They are the only adult secure facility in Montana to receive this award.

Times have changed and budget reductions have placed an emphasis on decreasing the size of institutions and growing community corrections. Now, Crossroads Correctional Facility has 210 empty beds. This required laying off 22 employees and demotion of several others. The based has gone from 160 in September 2002 to 109 today. As a for-profit operation, they are hard pressed to deal with this 41 percent vacancy rate, which has increased six percent from last month. One solution to this problem would be to allow out-of-state inmates to be housed at Crossroads Correctional Facility. **Warden MacDonald** maintained that if HB 451 is passed, Crossroads Correctional Facility will continue to provide the highest quality of correctional service and maintain public safety to the state. His staff is capable and willing to handle out of state inmates. **Warden MacDonald** stated it is imperative HB 451 allow flexibility to both the state and CCA so it does not discourage other states from seeking placement at Crossroads Correctional Facility.

**Warden MacDonald** submitted written testimony in support of HB 451, **EXHIBIT(jus66a08)**.

**Larry Bonderud, Mayor, City of Shelby**, informed the Committee that the 1997 Legislature provided the statutory authority for private correctional facilities in Montana. In December 1997, the DOC sent out a RFP for a private correctional facility development and operations. In June 1998, DOC received five proposals from five private companies to develop a facility. Three of those five chose Shelby as their proposed facility. In July 1998, the state entered into a contract with CCA to develop and operate a private correctional facility at Shelby. The RFP required that the facility proposal be a site and facility that would house 500 beds with a capability and infrastructure to expand to 1,500 beds. The facility needed to be able to accept 500 prisoners by September 1, 1999, or be subject to a \$5,000 per day penalty. In researching private correctional facilities, they studied 35 sites that had a private correctional facility built in their community within the past three years. They found these facilities are extremely safe for the communities and inmates alike. They also learned the private prison facilities had huge economic impacts on the community. **Mayor Bonderud** feels that the budget crisis will happen again in Montana; therefore, they need the flexibility to allow the private companies to react to these budget fluctuations. The families who followed inmates to Shelby are very productive members of the community. Property

values in Shelby have increased and crime rate has decreased because there are more trained law enforcement officers present in the community. The overall impact of the private correctional facility on the Shelby community has been very positive. The Department will need to amend its current contract with CCA, which is a premier contract, which will implement screening of out-of-state inmates for health and safety issues. The out-of-state entity will remain liable for the inmates. **Mayor Bonderud** testified there are a lot of safeguards in place.

**Mike Ruppert, CEO, Boyd Andrew Community Services**, provides chemical dependency services and operates the Helena Pre-Release Center. **Mr. Ruppert** testified one of the primary factors they considered in building the Pre-Release Center was who they would be in partnership with. They felt they could trust DOC as a business partner, and also viewed the state legislature as a partner. **Mr. Ruppert** felt non-profit and for-profits entering into business relationships will consider whether the state government, and by extension the state legislature, are good business partners. **Mr. Ruppert** urged the Committee to consider that when making a decision on HB 451.

**Dwain Iverson**, a CPA in Shelby, Montana, has been involved in economic development for over 25 years. He feels the economic development provided by Crossroads Correctional Facility has been very important to the Shelby community. More important, however, is the word of the state of Montana. The state said they would fill the facility with inmates and has not lived up to its end of the bargain. Now, the company that built the prison has financial problems. **Mr. Iverson** stated CCA has been an excellent corporate citizen, and they would like to see that business grow.

**Joni Stewart, Executive Director of Glacier County's economic development group GAIN**, submitted written testimony in support of HB 451, **EXHIBIT(jus66a09)**.

**LeAnne Kavanagh, representing Cutbank Pioneer Press, and the Glacier Reporter in Browning**, also submitted written testimony in favor of HB 451, **EXHIBIT(jus66a10)**.

**(Tape : 3; Side : A)**

**Opponents' Testimony:**

**Scott Crichton, Executive Director of the American Civil Liberties Union**, testified that he would like to support the bill because of the ability it will provide for Native Americans in federal prisons to return to the state of Montana. His experience with private prisons dates back to when Governor

Racicot decided to send inmates to Spur, Texas, to a private for-profit facility. The ACLU received so many complaints as a result of that experience, **Mr. Crichton** traveled to Texas to talk with inmates about their complaints. Introducing a profit motive into a fundamental state responsibility can lead to problems in the way inmates are treated. Incarcerating people also means attempts will be made to reform those individuals. The notion of expansion is a concern to **Mr. Crichton**. There are 300 empty beds in Shelby, and 600 more people in Deer Lodge than what the facility was designed to hold. We do not have a shortage of inmates. What we do have is a shortage of affordable beds that we can negotiate for the cheapest rate. We need to solve the problem, but not by expanding privatization and profiteering that goes with a core government function. If you deprive someone of their liberty, it is the state's responsibility to provide a safe environment for the public, and a reformative and punitive environment for the inmate. **Mr. Crichton** feels this bill should have maybe come before Senate Business Committee because the bill focuses on economic development, rather than corrections policy. **Mr. Crichton** is more concerned about the corrections policy. The amendment recognizes this is not a long-term solution, and the solution will terminate June 30, 2006. **Mr. Crichton** is also concerned about the language that provides for separation between out-of-state inmates and inmates who were convicted in this state. This could require expansion of the privatized facility in an effort to facilitate that separation. In Idaho, CCA had to pay \$90,000 per month for not fulfilling its commitment to seeing 20 percent of the people they incarcerate in their 1,500 facility have some sort of job training. Outside of Deer Lodge, regional prisons and the private prison do not provide training or counseling or the things you would expect a person to need in order to get out of the system with a chance of being better suited to surviving in society as a honest, tax-paying citizen. **Mr. Crichton** would like the Committee to consider making Crossroads Correctional Facility a state facility and operate it as such. **Mr. Crichton** feels the notion of how to make money should be taken out of the equation. Only the state has the power to deny someone of their liberty; consequently, the state has the obligation and responsibility to look after those individuals. In response to **Sen. Roush's** concern about liability for out-of-state inmates, the liability is not out of CCA's hands. Just because a correctional facility is privatized, does not mean they give up responsibility with what happens at a facility and your oversight. **Mr. Crichton** stated the we have the facility and empty beds and now Montana needs to resolve the problems that have predictably arisen from our action of building this facility. Is our primary responsibility to bailout a private corporation that is not getting what was originally promised? **Mr. Crichton** feels it is a bigger question and this is

not a business decision, but a policy decision. The prison industry should not be viewed as a way to build Montana's economic base.

**Questions from Committee Members and Responses:**

**SEN. CROMLEY** explored **Mr. Iverson's** statement about the state not living up to their end of the bargain. He asked if the state contracted to supply a certain minimum number of inmates to CCA.

**Mr. Iverson** stated the RFPs stated the facility could be assessed a per-day penalty if the facility was not built and able to house 500 inmates by a certain date. The facility did meet the deadline, and the state failed to deliver the 500 inmates.

**SEN. CROMLEY** asked if the state contracted to supply a minimum number of inmates to Crossroads Correctional Facility.

**Mr. Iverson** did not know what was in the contract.

**SEN. CROMLEY** added if they had specified an amount in the contract, there could be a lawsuit filed by CCA against the state.

**Mr. Iverson** believed it was verbally expressed that there would always be that number of inmates.

**SEN. CROMLEY** asked if CCA had attorneys when they entered into the contract.

**Mr. Iverson** replied they did.

**SEN. CROMLEY** stated if an amount was not specified in the contract, then the blame would lie with CCA rather than the state.

**Mr. Iverson** commented he was not part of the negotiations.

**SEN. CROMLEY** stated to **Warden Mahoney** as he reads the statute there is no requirement on the part of CCA to accept any state prisoners.

**Warden Mahoney** agreed stating that was his understanding as well.

**SEN. CROMLEY** asked how much the state paid to CCA per inmate.

**Warden Mahoney** responded the per diem rate is in the neighborhood of \$52-\$54.

**SEN. CROMLEY** asked if it was possible that CCA might be able to receive inmates at a higher rate from places outside the state.

**Warden Mahoney** replied that could be correct and it would depend on what the per diem rate is that they negotiate with the other entity.

**SEN. CROMLEY** observed if they were in the business of making money, there would be no reason why they would not accept all prisoners from out of state and expand to 1,500 prisoners.

**Warden Mahoney** replied if the state would allow them to do that, that would be correct.

**SEN. CROMLEY** asked if this law would allow them to do that.

**Warden Mahoney** believes the only facility by statutory authority that disallows placement of out-of-state inmates is the private prison.

**SEN. AUBYN CURTISS** asked **Rep. Clark** to explain the rationale for Instruction 4, realizing there are two issues, and would like **Rep. Clark** to address the first issue.

**Rep. Clark** explained that was an amendment added by House Judiciary to assure that an out-of-state inmate would not be released in the state of Montana. They wanted to assure that inmate would be returned to their point of origin before they were released.

**SEN. CURTISS** stated the amendment would strike the 90-day requirement.

**Rep. Clark** clarified the amendment is for the discretion of Senate Judiciary.

**SEN. PERRY** asked about the cost-per-day, per-bed, at MSP.

**Warden Mahoney** put that cost at approximately \$60 per day.

**SEN. PERRY** then asked **Warden MacDonald** what his break-even point is in terms of number of occupied beds.

**Warden MacDonald** responded the breakeven number developed at their corporate office is 424.

**SEN. PERRY** asked the sponsor of the bill to expound why the phrase on lines 19 through 21 was added by the House.

**Rep. Clark** replied the language was added for health and safety reasons.

**SEN. O'NEIL** referred to the informational fact sheet, Exhibit 5, and the reference on page 2 to the contract entered between CCA and the state of Montana, and asked **Mr. Williams** to tell him about that contract.

**Mr. Williams** explained there is a 20-year agreement to purchase that facility. The state pays \$9.14 per day per inmate, and that brings the cost of the building down. For example, if in five years from now the state and CCA decide to part ways, the state will have a first right of refusal to purchase the building. If in 20 years the relationship still exists, years the building will become the property of the state of Montana because of the \$9.14/offender/day costs.

**SEN. O'NEIL** asked if it will make a difference how many inmates are there in how long it will take to pay for the building.

**Mr. Williams** stated the state pays just on the number of offenders the state actually has housed there. They do not guarantee a certain amount of money. If there are out-of-state offenders housed there and CCA was recouping some of that cost, it would lower the amount the state would have to pay towards the building. Other offenders from other localities will reduce the burden to the state.

**SEN. O'NEIL** asked if whoever sends out-of-state offenders to Crossroads will also pay \$9.14 a day towards the state's account.

**Mr. Williams** stated that was right and it helps to ease the state's burden.

**SEN. O'NEIL** then asked what the total amount is that is paid at the \$9.14 per day rate.

**Mr. William** thought the total amount was about \$32 million, and the state has paid about \$3 million of that amount.

**CHAIRMAN GRIMES** asked if there is any cap or limitation on what could be charged for a prisoner from another state or if that was done through our correctional system.

**Warden MacDonald** explained that would be in the contractual negotiations and there is not a set cap per se. CCA plans to have the state be involved in the process of operations and oversight.

**CHAIRMAN GRIMES** asked if out-of-state prisoners provide a financial incentive, is there a danger down the road that they be preferred over state inmates.

**Warden MacDonald** explained that when they came into Montana, their intention was to house Montana inmates, and that goal has not changed. In addition, the state of Montana licenses Crossroads Correctional Facility; therefore, they would need to serve the state's needs first.

**CHAIRMAN GRIMES** asked if **Warden MacDonald** had a projection as to what percentage of prisoners would be from out of state, or if that number would vary depending on how many in-state prisoners the state of Montana would have housed at Crossroads.

**Warden MacDonald** replied at this point they have 210 vacant beds. They would like to fill as much of that vacancy rate as possible. They have two housing areas vacant at this time. The current contract with the state of Montana gives Montana first rights.

**CHAIRMAN GRIMES** specifically recalled that when they were contemplating the facility in Shelby, there would not be any out-of-state prisoners. He asked **Warden Mahoney** if he had any recollection as to the discussion and why that was decided.

**Warden Mahoney** replied they wanted to ensure the integrity of the expanding process for secured-care facilities within the state. The private prison industry was taking off at that time and the legislative body looked at the costs of construction versus the other options. He remembered that the private prison was a win-win situation because there were a number of county jails with potentially problematic legal problems due to conditions of confinement. They looked at what was done in Utah and the partnership with the regional prisons. One of the caveats with letting a private prison come in was that the state did not want to put a private prison in a position where they could expand the institution and take on the needs of other correctional systems. Many states were in the same position as Montana wherein they had more inmates than resources. If private prisons took out-of-state inmates, there was the potential of getting inmates affiliated with gangs or high-custody inmates.

**CHAIRMAN GRIMES** stated to **Rep. Clark** that this will introduce a new element into her community. Out-of-state inmates will have families moving with them, and that will bring different types of people to her community. **CHAIRMAN GRIMES** asked if she had discussed this possibility with the members of her community, and asked if they were willing to handle the potential issues that may come with housing out-of-state inmates.

*(Tape : 3; Side : B)*

**Rep. Clark** responded two families have followed prisoners into the city of Shelby and they are very productive citizens. There has been a decrease in welfare and a decrease in crime rate because of the prison. They have done national research, and discovered that this is the trend. **Rep. Clark** is confident in the facility and the city of Shelby and the surrounding communities that if there is a problem, they will address those problems. Research does not indicate there will be problems.

**CHAIRMAN GRIMES** asked who will be doing the screening of the inmates.

**Rep. Clark** replied the DOC will be performing the screenings.

**SEN. McGEE** stated he has been down this road and asked **Mr. Williams** a series of questions to give a historical view of Montana's prison system.

**SEN. McGEE** asked **Mr. Williams** if the original contract had legislative overview.

**Mr. Williams** replied it did have overview by the Legislative Auditor's Office.

**SEN. McGEE** asked if it was attended to in 1997 by a Corrections Oversight Committee.

**Mr. Williams** replied there was a Corrections Oversight Committee in 1997 and **SEN. McGEE** served on that Committee.

**SEN. McGEE** then asked if the contract required prisoners to first go to MSP, then to the regional prisons, and then to any other private prison.

**Mr. Williams** stated that was correct.

**SEN. McGEE** then stated there were five responses to the RFP, including three responses from the largest private correction entities in the world. The contract was ultimately awarded to CCA. **SEN. McGEE** then asked what guarantees Montana made to CCA with regard to the number of prisoners that would be incarcerated in that facility.

**Mr. Williams** replied that the state did not make any guarantees as to the number of prisoners that would be housed there, and that was explicit.

**SEN. McGEE** repeated, for the benefit of the Committee, that there was no obligation on the part of the state of Montana to incarcerate any prisoners at the facility. It was strictly up to CCA to decide whether to build in Shelby and, if so, how big to build.

**Mr. Williams** replied that was exactly correct.

**SEN. McGEE** went on stating CCA started out with a 500-bed facility thinking it might to 1,000 and then to 1,500.

**Mr. Williams** agreed.

**SEN. McGEE** asked if CCA built the facility, so it would be capable of making that expansion.

**Mr. Williams** explained CCA built the infrastructure, so it was capable of expanding to 1,500.

**SEN. McGEE** asked if discussion was held about out-of-state inmates at the time the original contract was overseen by the legislature and what that discussion centered around.

**Mr. Williams** recalled the discussion centered around a recent riot at a CCA facility in northeast Ohio. The Oversight Committee felt that since they did not know anything about CCA, and they were all relatively new to this issue, they did not want to take the path of immediately opening up the potential for out-of-state inmates until they knew if CCA would be a good corporate neighbor and fit with Montana's style. In a trip back to Memphis, Tennessee, with **SEN. McGEE**, they toured two CCA facilities.

**SEN. McGEE** asked if, in Montana's contract with a private prison, there is a requirement the private prison obtain accreditation from National Corrections Standards and if any other facility in Montana meets those accreditation standards.

**Mr. Williams** replied that was a requirement and those accreditation standards are also met by the Pine Hills Youth Correctional Facility and the Board of Pardons and Parole.

**SEN. McGEE** asked if MSP or any of the other regional prisons meet that criteria.

**Mr. Williams** responded they do not meet that criteria and, while they are not required to meet that criteria, they are encouraged to meet that criteria. In response to **SEN. McGEE**, **Mr. Williams** replied it is unlikely MSP will be able to meet that criteria.

**SEN. McGEE** summarized that CCA has met a higher standard of accreditation than any other state incarceration facility in Montana. **SEN. McGEE** asked if Montana taxpayers are paying for incarceration of prisoners at Crossroads Correctional Facility.

**Mr. Williams** replied the taxpayers are paying for inmates to be incarcerated at Crossroads Correctional Facility. In addition, **Mr. Williams** agreed the citizens of Montana are meeting their obligation.

**SEN. McGEE** asked **Warden Mahoney** the age of facilities at MSP.

**Warden Mahoney** believed they traveled from downtown Deer Lodge to the facility east of Deer Lodge in the 70s, which would make the facility almost thirty years old.

**SEN. McGEE** asked **Warden Mahoney** whether he would rather be warden of the Shelby facility or MSP, based on the facility alone.

**Warden Mahoney** replied the physical plant at Shelby is far superior to MSP. Warden Mahoney opined that based on just the physical perspective, it is easier to run a facility contained in one building. Therefore, most inmates would prefer to be housed at Crossroads Correctional Facility.

**SEN. McGEE** asked if it is easier to guard prisoners at Crossroads Correctional Facility than MSP.

**Warden Mahoney** responded both the static and dynamic security systems are far superior at the Shelby facility.

**SEN. McGEE** asked if there is any reason Warden Mahoney could think of that validates ACLU's testimony that the state is not meeting its contractual obligation with the private prison where the contract is at \$52 to \$54 per day, per bed, versus MSP, which is approximately \$60 per day, per bed.

**Warden Mahoney** failed to see any validity to the argument presented by the ACLU and did not feel the bill is relative to a philosophical debate of private prisons lending itself to private industry.

**SEN. McGEE** asked **Warden Mahoney** if there was anything from the 1997 and 1999 era, when all these corrections issues were addressed, that he would like to explain to the Committee.

**Warden Mahoney** felt the key issues had all been addressed.

**SEN. MIKE WHEAT** was curious what the bed capacity is at MSP.

**Warden Mahoney** believed design capacity to be 862. Yesterday's count was 1308 on site. The prison was not designed to be double-bunked the way they currently are.

**SEN. WHEAT** stated if it costs Crossroads Correctional Facility \$52 to \$54 per day to house an inmate in a superior facility, and it costs \$60 per day at MSP, why not fill up Crossroads Correctional Facility.

**Warden Mahoney** explained there are a couple of issues. The difference in cost is because Crossroads Correctional Facility does not accept maximum security inmates. Inmates with serious mental illness or medical problems are very cost intensive inmates. They feel they can keep the state in better financial position by not duplicating those types of costs in another facility. The other key component is with no guarantee in the contract with Crossroads Correctional Facility and based on the current budget system, the more they drive down the number of secured-care inmates, the more likely they will come in on budget.

**SEN. WHEAT** admitted he did not understand the reasoning. **SEN. WHEAT** asked if it would cost the state \$52 per day, per inmate, at Crossroads Correctional Facility.

**Warden Mahoney** stated the Chief Fiscal Officer for the Department of Corrections might be better able to explain the difference.

**Mr. Williams** explained it is based upon the concept of marginal cost. He explained whether there are three inmates or ten inmates, they will pay for a correctional officer to monitor the inmates. They pay Crossroads \$50.11 for every inmate they send there. For every additional inmate they receive at MSP, it costs only \$6 to \$7 to house that inmate because the warden is in place, the structure is in place, the correctional officers are in place. It only costs bedding, food, and medicals. If they shut down a couple of units, the state would lose about \$30 per day, per inmate, versus placing the inmate at Crossroads. MSP runs a full reception unit that all offenders go through. They do the full reception so the Shelby facility does not have to recreate the wheel. MSP has Close Unit Three which houses severe mentally-ill offenders. The truth is, Crossroads gets the cream of the crop, and MSP gets the cream of the crap. The most troublesome inmates stay at MSP.

**SEN. WHEAT** stated it is cheaper for the taxpayers to operate MSP way over capacity rather than fill up a superior facility to capacity.

**Mr. Williams** replied that it correct, due to the fact that the complete compliment of staffing is already present at MSP.

**SEN. WHEAT** proposed if the facility at Shelby is a superior facility and capable of being expanded, the state should just purchase the facility.

**Mr. Williams** responded it would cost \$28 to \$29 million in bonds that the state does not have. It would also require adding 160 to 170 FTE, and the partnership in Shelby is working admirably.

**SEN. WHEAT** stated contract between the Department of Corrections and CCA is fairly complex. He wonders if this bill is passed, if that contract will be amended to provide for the migration of out-of-state inmates into Montana.

**Warden Mahoney** replied it probably would, but he would have to run that question by his legal staff.

**SEN. WHEAT** thought that contract would want to make sure DOC had sole discretion to screen out-of-state inmates.

**Warden Mahoney** agreed their intention would be to screen all out of state inmates. It would also be the intent to look toward the originating state to take care of the health care needs of the out-of-state inmates. If an individual becomes a behavior management problem or has illnesses beyond the scope of what can be provided, that particular inmate would be returned to the jurisdiction he was received from.

**SEN. WHEAT** asked if Warden Mahoney anticipated the contract giving a preference to Native American inmates who have been sentenced through the federal system and are in federal prisons outside of the state of Montana.

**Warden Mahoney** replied DOC would not oppose such an amendment to the bill.

**SEN. WHEAT** referred to the letter from Teton County suggesting county inmates be allowed to be housed at Crossroads Correctional Facility.

**Warden Mahoney** replied if county inmates who have been adjudicated, not pretrial detainees, met the appropriate criteria to be placed in a prison facility, he would be amenable to such an amendment. **Warden Mahoney** cautioned against mixing populations.

**SEN. MANGAN** wanted to ensure other regional facilities in the state would not be detrimentally affected by this bill. **SEN. MANGAN** would like DOC's comment on the record.

**Mr. Williams** replied other regional facilities would not be detrimentally affected by the bill. **Mr. Williams** noted a letter of support from Cascade County contained in Exhibit 5.

**SEN. MANGAN** asked if there would be competition for federal beds and noticed the language had been removed and then placed back in.

**Mr. Williams** commented there will be two different types of federal inmates. Cascade County houses inmates who are making a quick hop to the courthouse on federal charges and are not long-term. Crossroads would not house these inmates since it would mean driving eighty miles to Shelby to pick up an inmate for a court appearance. While these are both federal offenders, they are two completely different types of inmates.

**SEN. CROMLEY** asked **Warden Mahoney** if the contract between the state of Montana and CCA is renewed annually.

**Warden Mahoney** believed the contract was an extensive multi-year contract, but referred the question to **Joe Williams**.

**Mr. Williams** replied it was originally a four-year contract which will expire in October 2003.

**SEN. CROMLEY** asked if the contract contained a clause which would give preference to Montana inmates.

**Mr. Williams** believed it is in the current contract and preference will also be provided by the amendment.

**SEN. CROMLEY** was curious why the language would be in there since they cannot take any out-of-state inmates anyway.

**Mr. Williams** explained the language was included in case issues came up with county jails or other local jurisdictions. He would specifically need to review the contract since it is a voluminous contract.

**SEN. CROMLEY** did not see anything in the law which would require a contract to give preference to state inmates.

**Mr. Williams** replied indirectly there is a provision in the contract because if Crossroads did not give preference to Montana inmates, Montana would claim breach of contract and negotiations,

and Montana would have right of first refusal to purchase the facility.

**SEN. CROMLEY** wondered if other states are actively looking for places to house inmates.

**Mr. Williams** informed **SEN. CROMLEY** that Wyoming, Hawaii, and Alaska are looking for places to house inmates.

**SEN. CROMLEY** assumes if this bill passes, a number of other prisons would open up in Montana.

**Mr. Williams** did not believe that would be the case.

**SEN. CROMLEY** asked whether there was a market for prisons.

**Mr. Williams** replied there is a limited market, but there is not a wide-open market as evidenced by downsizing by private prison companies.

**SEN. CROMLEY** clarified that Mr. Williams said other states were looking for places to house their inmates.

**Mr. Williams** expanded on his early statement saying other states are looking for housing on more of a short-term basis while attempting to implement their own programs. They are usually looking for one- or two-year placements. The exception would be Hawaii since land is limited and not readily available for construction of new prisons.

**SEN. CROMLEY** asked if Montana should be looking into the market to determine how many additional prisons will be built in the next five to ten years in response to the market.

**Mr. Williams** did not feel there would be a way to make that determination.

*(Tape : 4; Side : A)*

**SEN. O'NEIL** asked **Warden Mahoney** to compare a prisoner's quality of life at MSP to the quality of life at Crossroads Correctional Facility.

**Warden Mahoney** explained there are more rehabilitative programs available at MSP. In terms of meals, out-of-cell time, and security, **Warden Mahoney** believes the institutions are comparable.

In answering the same question, **Warden MacDonald** stated the quality of life is similar. They are required to adopt multiple policies set by DOC that relate to the operations of the facility. Every policy and every program must be approved by DOC. Their programs mirror those at MSP. He believes the quality of life between the two institutions is very similar. The difference lies in the facility itself. MSP is a campus-style facility, whereas, Crossroads Correctional Facility is under one roof. The programs and policies are very similar.

**SEN. McGEE** asked if there is currently a waiting list for Crossroads Correctional Facility and if the bill passes would they be able to get prisoners housed in short order.

**Mr. Williams** replied Federal Marshals would like to move federal inmates in right away.

**SEN. McGEE** remembered the contract prohibits a certain level of prisoners and that the real bad prisoners have to go to MSP. He wanted to know what level of prisoners go to Crossroads Correctional Facility.

**Mr. Williams** replied Crossroads Correctional Facility houses minimum to medium inmates and close-custody inmates.

**SEN. McGEE** would like to know how long it will take DOC and CCA to reach an amended agreement to allow for out-of-state prisoners if the bill passes.

**Mr. Williams** estimated it would take six weeks.

**Closing by Sponsor:**

**Rep. Clark** stated she put the amendment on the private prison bill in 1999 to allow only prisoners tried and convicted in the state of Montana to be housed at the private prison. She did this for Shelby's comfort zone. She has worked at the private prison and kept track of the things that go on there and in her community. She now believes the private prison should be allowed to house out-of-state and federal inmates because the private prison has a proven safety record. They maintain national accreditation and pay their bills. The private prison has been a good partner with the community, counties, and state.

**ADJOURNMENT**

Adjournment: 11:45 A.M.

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SEN. DUANE GRIMES, Chairman

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CINDY PETERSON, Secretary

DG/CP

**EXHIBIT (jus66aad)**